

Message Text

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ACTION EA-09

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FM AMEMBASSY MANILA

TO SECSTATE WASHDC 7784

INFO SECDEF WASHDC

JCS WASHDC

CINCPAC

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CINCPACFLT

CINCPACREPPHIL SUBIC

CG 13TH AF CLARK

C O N F I D E N T I A L SECTION 1 OF 2 MANILA 10716

CINCPAC ALSO FOR POLAD

FROM USDEL 143

E.O. 11652: GDS

TAGS: MARR, RP

SUBJECT: PHILIPPINE BASE NEGOTIATIONS: DAILY SUMMARY NO. 22

1. ENTIRE DAY OF JULY 21 DEVOTED TO WORKING GROUP MEETINGS. ALL GROUPS (TAXATION GROUP DID NOT MEET) APPEAR TO BE CONFORMING TO GUIDANCE OF JULY 20 INVOLVING PUTTING DOWN AGREED LANGUAGE WHERE POSSIBLE, AND AS A RESULT, A MEASURE, ALBEIT SMALL, OF PROGRESS IS APPARENT. PLAN IS TO DEVOTE ENTIRE DAY JULY 22 TO WORKING GROUP MEETINGS AS WELL.

2. CHAIRMEN'S GROUP. ROMUALDEZ AND SULLIVAN MET IN MORNING AND AFTERNOON SESSIONS. MORNING SESSION RESULTED AD REFERENDUM AGREEMENT ON REDRAFT OF PREAMBLE (SEPTTEL). AFTERNOON SESSION DEVOTED TO DISCUSSION OF JOINT COMMISSION/MUTUAL DEFENSE BOARD. SULLVAN TABLED WASHINGTON DRAFT OF JOINT COMMISSION. AFTER SOME
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DISCUSSION, ROMUALDEZ AGREED TO TAKE UNDER CONSIDERATION.

SUBSEQUENT DISCUSSION CONCERNED GUIDANCE TO VARIOUS OTHER WORKING GROUPS, WHICH EACH CHAIRMAN UNDERTOOK TO PROVIDE UNILATERALLY THROUGH RESPECTIVE PANELS.

3. FACILITIES WORKING GROUP. IN MORNING SESSION, GROUP EXAMINED IN SOME DETAIL US PROVISIONS REGARDING CHANGES IN FACILITIES (PARA 2 OF US ARTICLE V AND PARA 4 OF STATE 174567). IN EFFECT, PHILS DESIRE TO HAVE AGREEMENT ON SUBSTANTIAL CHANGES IN NUMBER, EXTENT, USES OR PURPOSES, BUT WE MAY BE ABLE TO WORK OUT COMPROMISE OF CONSULTATIVE FORMULA REGARDING ALL EXCEPT SUBSTANTIAL INCREASES. WE WERE PROMISED BUT HAVE NOT YET RECEIVED A PHIL COUNTER-PROPOSAL TO TEXT SET FORTH IN PARAL OF STATE 174567.

4. REMAINDER OF DAY IN FACILITIES WORKING GROUP WAS DEVOTED TO PROTRACTED DISCUSSION OF INTELLIGENCE SHARING (PARA 11 OF ARTICLE II IN GOP JUNE DRAFT). PHIL SIDE TENTATIVELY REACCEPTED BUT THEN AGAIN REPUDIATED A FORMULATION ALONG LINES REPORTED IN MANILA 10476 (US DEL 130), PARA 3(B), AND DEMANDED FULL SHARING OF RAW DATA COLLECTED OR PRODUCED THROUGH THE FACILITIES. AS A RESULT OF STRONG ARGUMENTATION, WE THINK WE HAVE WORKED THEM TOWARD A VERSION WHICH SHOULD BE ACCEPTABLE FROM US STANDPOINT IN ACCORDANCE WITH STATE 171459, BUT CONSIDERATION OF THIS SUBJECT WILL BE RESUMED TOMORROW, WITH OUTCOME CHARACTERISTICALLY UNPREDICTABLE.

5. COMMAND AND CONTROL. WORKING GROUP SPENT ENTIRE DAY IN FAIRLY DETAILED AND OPEN DISCUSSIONS OF PHIL ARTICLE VI (RE-DRAFT), U.S. ARTICLE IX AND U.S. ARTICLE VII. WHILE PHILS INDICATED APPARENT FLEXIBILITY AND WILLINGNESS TO ACCOMMODATE U.S. OPERATIONAL REQUIREMENTS, IT WAS LIKEWISE OBVIOUS THAT PORT CONTROL AND SUPERVISION OF AIR TRAFFIC CONTROL (PERHAPS TO A LESSER EXTENT) WILL, AS PREDICTED, BE TOUGH PROBLEMS. NOT YET CLEAR WHETHER NPW VISITS WILL BE A PROBLEM - PHILS INDICATE THEY DO NOT INTEND FOR THEM TO BE, BUT THEIR DRAFT LANGUAGE IS SOMEWHAT OTHERWISE SO FAR. PHILS STATED CLEARLY THAT THEY HAVE SPECIFIC GUIDANCE TO ENSURE THAT THEY EXERT THEIR SOVEREIGNTY BY CONTROL OF ALL ENTRANCES OR EXITS TO THE PHILIPPINES WHETHER

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BY LAND, AIR OR SEA.

6. LEGAL. LEGAL SUBGROUP MET AND WENT OVER DETAILS AND PROPOSALS ON FCJ, CLAIMS, APPLICATION OF PHIL LAW AND ASYLUM. GOP PANEL CONTINUES TO BE RELUCTANT TO CONSIDER SPECIFICS OF FCJ PROPOSAL, REITERATING THAT DETAILS WILL FALL INTO PLACE "IN HALF A DAY" IF MAIN ISSUE IS RESOLVED. IN RESPONSE TO QUESTIONS, PHIL SIDE NOTED

SPECIFIC OBJECTIONS TO US 12 JULY DRAFT FCJ ARTICLE AS
FOLLOW:

(A) THE FIRST LINE MUST BE DELETED BECAUSE IT SUGGESTS
THAT PHIL JURISDICTION HAS ITS SOURCE IN THE
AGREEMENT.

(B) DEFINITION OF SECURITY OFFENSE, PARA 2C IS TROUBLE-
SOME BECAUSE DIFFERENT FROM GOP DEFINITION. THEY
INQUIRE WHY WE NEED THIS AND WOULD LIKE TO SOLVE PROBLEM
BY DELETING DEFINITION AND ALSO REFERENCES TO SECURITY
OFFENSES IN PARA 2A AND 2B, WHICH THEY REGARD AS RE-
DUNDANT. USDEL BELIEVES DEFINITION OF SECURITY
OFFENSE IS UNNECESSARY IN VIEW OF FIRST SENTENCE OF
PARA 3.

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(C) PHIL SIDE CONTINUES TO REQUIRE SOME WAY OF RETAIN-
ING JURISDICTION OVER INTER SE CASES WHERE VICITIM IS

FILIPINO DEPENDENT. THEIR PROPOSALS FOR LIMITING INTERSE CASES TO OFFENSES IN WHICH VICTIM IS MEMBER OF FORCE IS ADMITTED TO BE OVERKILL. A U.S. PROPOSAL IN THIS AREA WILL BE REQUIRED.

(D) DISCUSSIONS CONTINUE TO CONFIRM GOP DEMAND IN OFFICIAL DUTY AREA IS REALLY FOR SHARING IN DECISION MAKING, NOT FOR TAKE OVER BY GOP OF OFFICIAL DUTY DETERMINATION. AT PROPER TIME USG WILL NEED TO FALL OFF OF CLAIM TO EXERCISE JURISDICTION UNILATERALLY IF NO AGREEMENT REACHED IN 30 DAYS. A DEFINITION OF OFFICIAL DUTY MAY ALSO BE NEEDED.

7. CLAIMS. INTERMINABLE DISCUSSIONS OF MERITORIOUS AND NON-COMBAT FAILED TO RELIEVE GOP SUSPICIONS ABOUT THESE
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TERMS. WE ARE USING A WORKING PAPER WHICH CLARIFIES THAT NON-COMBAT ACTIVITIES INCLUDE CLAIMS ARISING FROM MANEUVERS AND TRAINING, AND INDIRECT COMBAT DAMAGE (REF 10 USC 2734 (B) 3.) WE HAVE UNDER CONSIDERATION SOLVING PROBLEM OF "MERITORIOUS" CLAIMS BY DELETING THE WORDS "AND PAY MERITORIOUS CLAIMS" FROM FIRST LINE OF US PROPOSAL. US OBLIGATION WOULD THEN BE TO SETTLE CLAIMS. GOP APPEARS TO WELCOME THIS SUGGESTION, BUT ITS EFFECT ON THEIR DISPOSITION TO APPROVE OUR PARA 2, EXEMPTION FROM NO-FAULT INSURANCE, IS NOT YET CLEAR.

8. ASYLUM. FIRST DISCUSSION OF ASYLUM PROVISIONS DISCLOSED GOP NOT COMMITTED TO DETAILS OF THEIR PROPOSAL (GOP DRAFT ART III, PARA 10, BUT THEY ARE CONCERNED ABOUT ALLEGED INSTANCES OF DEPARTURE OF FILIPINO POLITICAL FIGURES ON U.S. VESSELS AND AIRCRAFT. WE HAVE SUGGESTED GOP MIGHT WISH TO SOLVE THIS PROBLEM BY DELETING THE SUBJECT. WE WILL DISCUSS TOMORROW.

9. APPLICATION OF PHILIPPINE LAW. GOP OBJECTS TO US FIRST PARA AS BEING REDUNDANT IN VIEW OF SIMILAR STATEMENT IN PREAMBLE. WE AGREE. SOME PROGRESS IS VISIBLE ON THIS ARTICLE AS MENDOZA TABLED WORKING PAPER, REPEAT WORKING PAPER FOR FIRST TIME REFERRING IN WRITING TO "IMPLIED EXEMPTIONS." WE WILL CONTINUE DISCUSSION TOMORROW AND ALSO DISCUSS IMMIGRATION.

10. LABOR: TODAY'S SESSION WAS THE FIRST SINCE FRIDAY WHEN A DRAFT OF DIFFERENCES IN POSITIONS WAS PREPARED JOINTLY FOR PRESENTATION TO THE CHAIRMAN. UNDERSECRETARY INCIONG ENTHUSIASTICALLY LAUNCHED INTO A SCENARIO FOR RESOLUTION OF DISPUTES. WITH SLIGHT MODIFICATIONS TO ACCOMMODATE A DIFFERENCE BETWEEN DISPUTES ON MATTERS

OF EVERYDAY OPERATION AND THOSE OF PRECEDENT OR POLICY,
THE PROCEDURE IS SIMILAR TO THAT NOTED IN PARA 2 (2) AND
2(4) IN USDEL CABLE 122 OF 15 JULY ON PREFERENTIAL
EMPLOYMENT AND RESOLUTION OF DISPUTES. IT IS A BILATERAL
RESOLUTION PROCESS WITH DECISION POINTS AT THE LEVEL OF
THE BASE-FACILITIES COMMANDERS OR THE JOINT COMMITTEE.
INCIONG'S VERSION INCLUDED GOP DEPT OF LABOR CONCILIATION
OR MEDIATION EFFORT IF UNIONS AND EMPLOYING ORGANIZATIONS
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DO NOT AGREE ON CASE AND PRIOR TO RESOLUTION BY BASE AND
FACILITIES COMMANDERS. THERE WERE NO LECTURES ON APPLI-
CABILITY OF PHILIPPINE LAW AND BINDING ARBITRATION WAS
NOT INCLUDED AS A REQUIREMENT IN THE PROCESS.

11. HE NEXT OUTLINED METHODS FOR FIXING WAGES AND COM-
PENSATION ACCEPTING ALL OF OUR PRESENT PRACTICES AND
ADDING TO THESE A MEDIATION-LIKE PROCESS IN THE EVENT
TRANSLATION OF THE NEW DATA INTO WAGE LINES CAME INTO
DISPUTE. THESE TWO EXERCISES WERE A MAJOR CONCESSION
ON HIS PART FROM THE PHILIPPINE POSITIONS IN PARAS 3 AND
4 OF THEIR DRAFT ARTICLE XI. THE PHIL WILL DRAFT VERSIONS
OF THE ABOVE FOR OUR CONSIDERATION.

12. WE THEN DISCUSSED PREFERENTIAL EMPLOYMENT AND
RECRUITMENT. IT APPEARS THAT THE PROPOSED DRAFT LANGUAGE
OF USDEL 122 WILL BE LARGELY ACCEPTABLE ON BOTH, EXCEPT
THAT THE PHILS WANT MIGHTILY TO REPLACE THE TERM SPECIAL
MANAGEMENT NEEDS WITH WORDS LESS OFFENSIVE TO THEM.
SULLIVAN

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